

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE LITIGATION

MDL No. 1456

THIS DOCUMENT RELATES TO:

CIVIL ACTION: 01-CV-12257-PBS

J&J CLASS 1

Judge Patti B. Saris

**CLASS COUNSEL’S MEMORANDUM IN SUPPORT OF THEIR MOTION TO ADD
CLASS ONE REPRESENTATIVE FOR THE JOHNSON & JOHNSON DEFENDANTS**

On March 26, 2010, Don Haviland filed a Notice of Voluntary Dismissal seeking to withdraw the only Class 1 representatives in the case against J&J from the case. Pursuant to this Court’s May 19, 2010 order, which entered Case Management Order No. 33, Class Counsel had until today to file a motion to add a new proposed class representative. Class Counsel have secured a client and, accordingly, hereby respectfully move for leave of Court to add Mrs. Jimmie Austed as a Class 1 representative for the J&J Defendants.

MEMORANDUM

On March 26, 2010, Don Haviland filed a Notice of Voluntary Dismissal, seeking to dismiss without prejudice the “individual claims” of both the Class 1 J&J representatives. *See* Dkt. No. 7013. Pursuant to the Court’s instructions during a March 31, 2010 status conference, on April 16, 2010, Class Counsel and the J&J Defendants each filed “Position Statements” indicating, generally, that they do not oppose dismissal of the Withdrawing Plaintiffs’ claims against the J&J Defendants. *See* Dkt. Nos. 7056 and 7058. In addition, Class Counsel have moved for sanctions against Mr. Haviland pursuant to 28 U.S.C. § 1927. Dkt No. 7059. Mr. Haviland has filed an opposition to that Motion. Dkt No. 7100, and Class Counsel have moved for leave to file a reply brief in support of that Motion. Dkt. No. 7108. The motion is

returnable on June 21, 2010 at 4:00 p.m. *See* Minute Order dated April 30, 2010.

On May 19, 2010, this Court entered Case Management Order No. 33, requiring, *inter alia*, Class Counsel to add a class representative by today.¹ Class Counsel have secured a replacement Class 1 representative and wish to add Mrs. Austed so that the Class 1 Plaintiffs' case against the J&J Defendants may proceed.

As set forth in the attached Affidavit of John A. Macoretta, Mrs. Austed has been taking Remicade since approximately 2000. Mrs. Austed has been a Medicare Part B beneficiary during that time and has made percentage co-payments for her Remicade infusions. She has been advised of the status of the litigation against the J&J Defendants and wishes to serve as a class representative. Therefore, Mrs. Austed is an appropriate representative for Class 1.

WHEREFORE Class Counsel respectfully request leave to add Mrs. Jimmie Austed as a Class 1 representative for the J&J Defendants, and all other relief that this Court deems just and appropriate.

DATED: June 9, 2010

By /s/ Steve W. Berman
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LIAISON COUNSEL

¹ In addition, because Mr. Haviland could not properly withdraw his clients by filing a Notice and instead needed to file a Motion, he had until June 1 to file a motion for leave to permit them to withdraw. Not only has Mr. Haviland failed to comply with that Order, but he has failed to respond to written requests from counsel for J&J to advise the parties of Mr. Haviland's intentions with regard to the clients he once claimed wanted to withdraw.

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CERTIFICATE OF SERVICE BY LEXISNEXIS FILE & SERVE

Docket No. MDL 1456

I, Steve W. Berman, hereby certify that I am one of plaintiffs' attorneys and that, on June 9, 2010, I caused copies of **CLASS COUNSEL'S MEMORANDUM IN SUPPORT OF THEIR MOTION TO ADD CLASS ONE REPRESENTATIVE FOR THE JOHNSON & JOHNSON DEFENDANTS** to be served on all counsel of record by causing same to be posted electronically via Lexis-Nexis File & Serve.

s/ Steve W. Berman
Steve W. Berman